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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re:)	Chapter 11
)	
BCE WEST, L.P., et al.,)	Case Nos. 98-12547 through
	)	98-12570-PHX-CGC
)	
Debtors.	)	Jointly Administered
)	
EID: 38-3196719	)	Emergency Motion for Expedited
	)	Consideration of Interim Order
	)	Extending Exclusive Periods for
	)	Debtors to File and Obtain Acceptances
	)	of Plans of Reorganization; Motion to
	)	Extend Exclusive Periods for
	)	Debtors to File and Obtain Acceptances
	)	of Plans of Reorganization

BCE West, L.P., Boston Chicken, Inc., Mayfair Partners, L.P., BC Great Lakes, L.L.C.,
BC GoldenGate, L.L.C., B.C.B.M. Southwest, L.P., BC Boston, L.P., BC Superior, L.L.C., BC
Heartland, L.L.C., BC Tri-States, L.L.C., Finest Foodservice, L.L.C., BC New York, L.L.C.,
R&A Food Services, L.P., P&L Food Services, L.L.C., Mid-Atlantic Restaurant Systems, Inc.,
BCI Massachusetts, Inc., BCI Southwest, Inc., BC Real Estate Investments, Inc., BCI Mayfair,
Inc., Progressive Food Concepts, Inc., BCI R&A, Inc., BCI West, Inc., BCI Acquisition Sub,

1 L.L.C., and Buffalo P&L Food Services, Inc., debtors and debtors in possession (the "Debtors")
2 request the Court to enter a final order pursuant to Section 1121(d) of the Bankruptcy Code,
3 increasing the time periods within which the Debtors shall have the exclusive right to file and solicit
4 acceptances of plans of reorganization for an additional 90 days, through and including October 31,
5 1999 and December 31, 1999, respectively. However, due to the fact that exclusivity as extended by
6 prior order of the Court expires on September 1, 1999, the Debtors seek on an expedited basis
7 consideration of an interim order extending the exclusive periods only through September 28, 1999,
8 at which time the Motion can be considered at the regularly scheduled monthly hearing in the
9 Debtors' cases. In support of this Motion, Debtors state as follows:
10

11 **I. JURISDICTION**

12 1. Pursuant to 28 U.S.C. §§ 1334 and 157, the Court has jurisdiction to hear this
13 Motion. Pursuant to 28 U.S.C. § 157(b)(2)(A) and (L), this Motion presents a core proceeding.
14 The relief requested can be authorized in accordance with 11 U.S.C. § 1121(d).
15

16 **II. BACKGROUND FACTS**

17 2. On October 5, 1998 (the "Petition Date"), the Debtors filed voluntary petitions for
18 relief under Chapter 11, Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), in
19 the United States Bankruptcy Court for the District of Arizona (the "Court"). The separate petitions
20 are now jointly administered pursuant to an order of this Court.
21

22 **III. PROCEEDINGS DURING CHAPTER 11 CASE**

23 3. Prior to the Petition Date, the Debtors, General Electric Capital Corporation ("GE
24 Capital") and Bank of America National Trust and Savings Association ("BoFA" and together with
25 GE Capital, the "Lenders") entered into extensive and extended discussions regarding the Debtors'
26 needs for postpetition financing in order to maintain the Debtors' operations, to preserve and

1 maximize the value of their estates, to continue with their rehabilitation business plan, and to
2 increase the possibility of a successful reorganization of the Debtors' businesses. The Lenders
3 agreed on the terms set forth in relevant loan documents to extend certain financial accommodations
4 to Debtors on a postpetition, secured, superpriority basis.

5
6 4. Upon the Debtors' filing for bankruptcy, this agreement between the Lenders and the
7 Debtors was set forth in the Interim and Proposed Final Order Approving Postpetition Financing and
8 Granting Liens and Super Administrative Priority Pursuant to 11 U.S.C. §§ 364(c) and (d) and
9 Modifying Automatic Stay ("Interim Order"). The Interim Order was very similar to the Final
10 Order Approving Postpetition Financing and Granting Liens and Super Administrative Priority
11 Pursuant to 11 U.S.C. §§ 364(c) and (d) and Modifying the Automatic Stay entered on October 29,
12 1998 ("Final Order"). The Final Order approved postpetition financing in the amount of \$70 million
13 which obligation is secured by liens and security interests insubstantially all of the Debtors' assets.
14 The Final Order was amended in February upon the agreed motion of the Debtors and the Lenders.
15 The DIP Order has been subject to two additional amendments and the request for a fourth
16 amendment is pending.

17
18 5. In addition to receiving authority to obtain postpetition credit, the Debtors were also
19 authorized to use cash collateral pursuant to the terms of a Court approved agreement among the
20 Debtors and their prepetition secured lenders.

21
22 6. By agreement with their secured creditors, the Debtors have also amended the terms
23 of the continued use of cash collateral.

24 7. The Debtors also filed two previous motions to extend the exclusivity period. The
25 Court entered its orders extending the exclusive periods to June 3, 1999, and August 2, 1999, and
26 subsequently to September 1, 1999, and November 1, 1999.

1 8. In connection with the operation of the Debtors' businesses, the Debtors have entered
2 into many leases of non-residential real property. Virtually all of the Debtors' restaurant business is
3 conducted on such leased premises. The evaluation and rejection of certain leases is extremely
4 tedious and time consuming. Even before the filing of their petitions, the Debtors were analyzing
5 the profitability of each of their Boston Market restaurants and determining which restaurants would
6 be closed, thereby negating the need for use of the real property.
7

8 9. Since the commencement of the Debtors' cases, the Debtors have filed eleven
9 separate motions to reject approximately 201 leases that are burdensome to the Debtors' estates,
10 have filed nine motions to sell surplus real property assets, six motions to assume amended non-
11 residential real property leases and have entered into multiple agreements to provide adequate
12 assurance to hundreds of utilities. In each instance, the Court has approved the requested relief.
13

14 10. The Debtors continue to analyze their non-residential real property leases to
15 determine which leases should be rejected or assumed. Included in the assets of the Debtors' estates
16 are numerous (approximately 600) unexpired non-residential real property leases between the
17 Debtors and various lessors. Restaurant operations continue in these locations. The Debtors have
18 requested and the Court has approved two extensions of time for the Debtors to determine which of
19 the remaining leases should be assumed. A third request for extension is pending. The Debtors
20 propose to resolve lease assumption issues in a plan of reorganization consistent with the terms of a
21 negotiated purchase agreement.
22

23 11. As evidenced by the foregoing, the Debtors have devoted substantial time and effort
24 insuring operational liquidity and stabilized operations. However, before the Debtors are in a
25 position to submit a meaningful plan of reorganization, there must be a passage of time to determine
26

1 the economic impact of the measures implemented by the Debtors and the turnaround plan as a
2 whole.

3 12. In addition to the foregoing matters, the Debtors are in the critical stages of their
4 cases with respect to negotiations with various parties interested in either an investment or
5 acquisition strategy that will enable the Debtors to reorganize as a going concern. Lazard, Freres
6 & Co. ("Lazard") has been consulting with the Debtors regarding the best available alternative
7 for formulating a successful plan of reorganization that maximizes recoveries in these cases.
8 Lazard has provided Debtors with financial advisory services, including actively representing
9 Debtors in negotiating and structuring potential transactions with a strategic or financial investor
10 or purchaser to enable Debtors to successfully reorganize their businesses. Based on Debtors'
11 internal analyses and input both from Lazard and the Debtors' secured lenders, the Debtors
12 believe that recoveries for creditors in these cases can be maximized through Debtors' ultimate
13 alliance with a strategic or financial investment partner or through a sale of Debtors. The
14 Debtors, the lenders and Lazard are currently evaluating investment or sale proposals.

17 13. Notwithstanding the current strategy, it is premature for the Debtors to formulate a
18 reorganization plan. Until such time as a winning bidder has been selected the Debtors suggest
19 that the process of maximizing value will be greatly impaired if the exclusivity period terminated.

21 14. In order to insure that the plan process is orderly and efficient, and that a plan is
22 proposed in a timely manner without delay and unneeded disruption, the Debtors believe that it is
23 imperative to continue the exclusivity periods.

24 **IV. RELIEF REQUESTED**

25 15. This motion represents the Debtors' third request for an extension of plan
26 exclusivity. This motion is filed neither for the purpose of delay nor with the intent to gain undue

1 advantage in these cases. Rather, the circumstances of these cases mandate that more time is
2 necessary to formulate, negotiate and insure implementation of reasonable and effective plan terms.

3 16. This Motion also requests expedited consideration and entry of an interim order that
4 extends the exclusive periods only through September 28, 1999. September 28, 1999 is the date
5 presently set for the regular monthly hearing in these cases. Exclusivity presently expires on
6 September 1, 1999. An interim extension only preserves the right for the Motion to be noticed and
7 heard in the normal course of the administration of these cases. No prejudice will result as a
8 consequence of the short term extension requested.
9

10 17. The Debtors' first request for an extension contained an extensive discussion of a
11 number of facts and circumstances relevant to a demonstration of cause why the exclusive
12 periods should be extended. Rather than repeat those facts and circumstances in this second
13 motion, the Debtors' incorporate the facts recited in the first motion in support of their second
14 motion for extension.
15

16 18. Section 1121(d) of the Bankruptcy Code confers upon the Bankruptcy Court
17 authority to grant extensions of the exclusive periods for filing a plan of reorganization and
18 obtaining acceptances thereof based upon "cause" as determined by the Court after consideration
19 of all the facts and circumstances of the particular case. *In re Tony Downs Foods Co.*, 34 B.R.
20 405, 407 (Bankr. D. Minn. 1983).
21

22 19. The "cause" standard set forth in Section 1121(d) has been referred to as a general
23 standard that allows the Bankruptcy Court "maximum flexibility to suit various types of
24 reorganization proceedings". *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.
25 N.Y. 1989) citing *In re Public Serv. Co. of N.H.*, 88 B.R. 521, 534 (Bankr. D. N.H. 1988); *In re*
26 *Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996).

1 20. Section 1121(d) does not define “cause.” Courts applying Section 1121(d) have not
2 consistently relied on the same factors. However, the following factors, have been identified and
3 generally relied upon by courts as being relevant in determining whether “cause” exists:

- 4 (a) the size and complexity of the case;
5 (b) the necessity of sufficient time to permit the debtor to negotiate a plan of
6 reorganization and prepare adequate information;
7 (c) the existence of good faith progress toward reorganization;
8 (d) the fact that the debtor is paying its bills as they become due;
9 (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
10 (f) whether the debtor has made progress in negotiations with its creditors;
11 (g) the amount of time which has elapsed in the case;
12 (h) whether the debtor is seeking an extension of exclusivity to pressure creditors to
13 submit to the debtor’s reorganization demands; and
14 (i) whether an unresolved contingency exists.

15 *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re Dow Corning Corp.*,
16 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997). When a court considers the enumerated factors in
17 deciding whether to extend the exclusivity periods, it is not limited to the task of counting factors. *In*
18 *re Dow Corning Corp.*, 208 B.R. at 699. Sometimes, certain other factors are more relevant,
19 important or persuasive than others are, and sometimes one or more factors determine the particular
20 result. *Id.*

21 21. It should be noted that for the Debtors’ chapter 11 cases to be considered “large
22 and complex” within the meaning of Section 1121, it is not necessary for the case to be on the
23 scale of Texaco or Johns-Manville, as examples. *See In re Express One*, 194 B.R. at 100 (the
24 case of a charter and cargo airline regulated by the FAA and operating a fleet of over 40 aircraft
25 worldwide with several thousand creditors asserting pre-petition claims against the estate in an
26 amount exceeding \$100 million was large and complex). In *Gaines v. Perkins (In re Perkins)*,
the court determined that a debtor’s case was unusually large and complex where there were only
100 creditors holding approximately 225 claims totaling \$10,000,000 on an estate valued at only

1 \$13,000,000. *In re Perkins*, 71 B.R. 294, 296 (Bankr. W.D. Tenn. 1987). Even though the
2 debtor was far smaller and its affairs much less complex than the Debtors herein, the *Perkins*
3 court approved five extensions of the debtor's exclusivity period for nearly two years because the
4 case was "unusually large and complex. *Id* at 300.

5
6 22. Other factors exist in this case that establish cause for extending the exclusivity
7 period. The Debtors are in the midst of a planned and implemented business turnaround effort
8 that is required for reorganization. Presently it is too early to determine the outcome of its
9 turnaround efforts and to measure the financial consequences. The exclusivity periods should be
10 extended to enable the Debtors to analyze their operations and profitability. Consequently, until
11 the financial consequences of the Debtors' turnaround efforts are measured and the outcome is
12 determined, neither the Debtors nor the other parties-in-interest will be able to formulate and
13 propose a responsible plan to the Debtors' creditors. *In re Amko Plastics, Inc.*, 197 B.R. at 77.

14
15 23. Section 1125(a) of the Bankruptcy Code requires that the proponent of a plan
16 disclose adequate information which would enable a hypothetical reasonable investor typical of
17 holders of claims or interests of the relevant class to make an informed judgment about the plan. 11
18 U.S.C. §1125(a) (West 1998). In the instant case, adequate information includes information
19 describing the Debtors' earning potentials, the rejection or assumption of non-residential leases, and
20 other operational changes being implemented. Without this information being on a sound historical
21 basis, it is not possible to determine the potential value available to the creditors or to provide
22 adequate information to the Debtors' creditors. *See In re McClean Indus.*, 87 B.R. at 835.

23
24 24. To require the formulation a plan before the Debtors are able to implement a basic
25 operational reorganization allowing realistic cash flow projections is unproductive and potentially
26 disruptive. Further, if the exclusive periods are not extended, the progress made and being made by

1 the Debtors in addressing lease assumptions and rejections, post-petition financing, and other critical
2 issues is likely to be interrupted or lost while the Debtors respond to the demands of various other
3 parties in interest with respect to the formulation of their plans and negotiations. Considering the
4 size and complex nature of the Debtors' case, the Debtors are working expediently to grapple with
5 and resolve the myriad of issues necessary for the negotiation of a consensual plan of reorganization.
6

7 25. Further, given the fact that the Debtors are engaged in on-going discussions with
8 multiple parties expressing an interest in acquisition or investment, termination of exclusivity at this
9 juncture would detrimentally effect and destabilize a delicate negotiation process.

10 26. In obtaining postpetition financing, stabilizing their employee relations, maintaining
11 a good relationship with their vendors, paying bills as they become due, negotiating with their
12 creditors, rejecting burdensome leases and assuming, on a more beneficial basis, real property
13 leases, the Debtors have exhibited good faith progress toward reorganization. Substantial progress
14 has been made in eliminating issues often critical for a successful reorganization.
15

16 27. It should be noted that the following factors, which may preclude an extension or
17 result in a reduction of the exclusivity periods, are completely non-existent in these cases:

- 18 (a) gross mismanagement of the debtor's operations (*In re Crescent Beach Inn, Inc.*, 22
19 B.R. 155 (Bankr. D. Me. 1982));
- 20 (b) acrimonious feuding between the debtor's principals, Texas Extrusion Corp. and
21 Palmer, Palmer & Coffee (*In re Texas Extrusion Corp.*, 68 B.R. 712, 725 (N.D. Tex.
22 1986) *aff'd*, *Matter of Texas Extrusion Corp.*, 836 F.2d 817 (5th Cir. 1988), *aff'd*, 844
23 F.2d 1142 (5th Cir. 1988), *cert. denied*, 488 U.S. 926 (1988));
- 24 (c) the debtor's case was not complex (*In re Curry Corp.*, 148 B.R. 754 (Bankr. S.D.
25 N.Y. 1992));
- 26 (d) no progress in arranging financing (*In re EUA Power Corp.*, 130 B.R. 118 (Bankr.
D. N.H. 1991));
- (e) extension would be fruitless (*See In re Gagel & Gagel*, 24 B.R. 674 (Bankr. S.D.
Ohio 1982)) (where there were only two creditors - one who was an insider and
could not be counted as an accepting class for purposes of §1129(a)(10) and the other
was opposed to the extension and would be impaired by anything less than full
payment);

- 1 (f) the extension is to pressure a creditor to accede to the debtor's point of view on an
2 issue in dispute (*Matter of Lake in the Woods*, 10 B.R. 338, 346 (E.D. Mich. 1981));
3 and
4 (g) multiple (seven) previous extensions of the exclusive periods with the stated
intention to continue extensions indefinitely and the substantial passage of time
(eighteen months). (*Id.*)

5 28. To conclude negotiations with interested buyers and investors and the closing of
6 unprofitable restaurant locations and the assumption and rejection of leases, to continue negotiations
7 with the Debtors' creditors, to address various other issues regarding lawsuits and claims against the
8 Debtors, to develop a realistic business plan and cash flow projections, the Debtors seek an
9 extension until October 31, 1999 of the exclusive period to propose plans and an extension until
10 December 31, 1999 of the exclusive period to obtain acceptance of such plans. These extensions are
11 not sought to pressure creditors to submit to the reorganization demands of the Debtors but to
12 maintain Debtors' operations as the focal point of plan negotiations and to protect the Debtors'
13 ongoing business value for all creditors and parties in interest. Furthermore, there is no indication
14 that the Debtors are unwilling to negotiate in good faith with their creditors, and there is no prejudice
15 to creditors if the presently sought extensions are granted.
16

17
18 29. Considering the factors set forth in *In re Dow Corning Corp.* and in *In re Express*
19 *One Int'l, Inc.*, the flexibility to be applied in dealing with the extension of the exclusivity periods,
20 the nature of the business of the Debtors, and the progress which has been made, the Debtors believe
21 sufficient cause exists to extend the exclusive periods.

22 30. In consideration of the foregoing facts and circumstances, the Debtors request that
23 the period during which they have the exclusive right to propose and obtain acceptance of a plan of
24 reorganization be extended on an interim basis until September 28, 1999, and after notice and
25 consideration at the Debtors' regularly scheduled hearing date on September 28, 1999, on a final
26

1 order basis until October 31, 1999, and to December 31, 1999, respectively, and that the Debtors be
2 granted such other and further relief as is just or to which they may show themselves justly entitled.

3 Dated this 1st day of September 1999

4 DEBTORS AND DEBTORS IN POSSESSION

5
6 By: /s/ H. Rey Stroube, III
7 One of their Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 1, 1999, the foregoing document was served by E-mail or first class United States Mail, postage prepaid, on all parties on the Master Service List #12 dated August 26,1999. Additionally, with respect to the interim, expedited relief requested, local Phoenix counsel for the 1996 secured lenders, the 1995 secured lenders, the Official Unsecured Creditors' Committee and the United States Trustee were telephonically notified contemporaneously with the filing of the Motion.

/s/ Karen Anders